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June 16, 2009

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VIA HAND DELIVERY

JUN 16 2009
2:50 PM

Ms. Thomasenia Duncan
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 2009-17

AOR: _____

Dear Ms. Duncan:

Pursuant to 2 U.S.C. § 437f and 11 C.F.R. § 112.1, Romney for President, Inc. ("RFP"), through counsel, hereby submits a request for an advisory opinion. Specifically, RFP asks whether, under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission ("Commission") regulations, it can disburse the value of unnegotiated and stale-dated refund checks that RFP has issued to primary election contributors, to a charitable organization described in section 170(c) of the Internal Revenue Code.

RFP is the authorized committee of Governor Mitt Romney's 2008 presidential campaign. RFP is currently winding down all operations and will seek to terminate as soon as the issue presented here is answered and all outstanding invoices can be settled. RFP did not apply for or accept any taxpayer funding under 11 C.F.R. §§ 9031.1 et. seq.

RFP refunded about \$156,000 to contributors who made excessive contributions designated for the primary election. All were issued within 60 days of receipt, as required by Commission Regulations.¹ The refund checks issued have not been negotiated and are stale under the Uniform Commercial Code in force in Washington, DC², where the campaign's depository is located.

The Commission in the past has indicated that the U.S. Treasury is a proper repository for such excessive contributions, although the issue appears unaddressed in either the statute or regulations. Rather than the U.S. Treasury, RFP would like to donate the funds remaining in its accounts from

¹ 11 C.F.R. § 103.3(b)(3).

² See D.C. Code § 28:3-304(a)(2) (checks are "overdue" 90 days after their date).

Ms. Thomasenia Duncan

June 16, 2009

Page 2

the checks refunded but not negotiated to a charitable organization that seeks to improve both the lives of individuals fighting a potentially debilitating disease and to increase medical research about the disease. Specifically, RFP would like to donate the funds to the Cystic Fibrosis Foundation, <https://www.cff.org>. This organization does not engage in electioneering activities or issue advocacy campaigns.

The question presented appears not to have been directly addressed in the Commission's Advisory Opinions. It does not concern excessive contributions designated for the general election³ and thus is not contemplated in AO 2003-18 (Bob Smith for U.S. Senate), where the "funds [were] comprised of contributions designated for the general election [and could] not be donated to [a section 501(c)(3) organization] because such use is not among the uses permitted in 11 CFR 102.9(e)(3), 110.1(b)(3)(i), and 110.2(b)(3)(i)." The only legal basis, however, upon which the Commission refused to let the requestor donate uncashed refund checks to a charity – the Millionaires Amendment, 11 C.F.R. §§ 400.51 and .53, deemed an "analogous regulation" by the Commission -- has been repealed.⁴

In Advisory Opinion 1991-39 (D'Amato), the Commission permitted a campaign committee that had received contributions that might have been contributed in the name of another to disburse the funds "for a lawful purpose," such as to a qualified charitable organization described in 26 U.S.C. § 170(c). While this option was premised on the "unusual circumstances present" of the requestor not being able to "determine the identity of the original contributor," the same altruistic purposes are present here.

In Advisory Opinion 1995-19 (Indian-American Leadership Investment Fund), another situation involving evidence that contributions might have been in the name of another, the Commission advised that the "amounts of those contributions for which the identified donors do not provide confirmation of illegality should be disbursed for any of the lawful purposes listed in Advisory Opinion 1991-39" (emphasis added). This opinion did not explicitly premise the permissible disbursement of funds to a charity on the fact that the original contributor could not be identified.⁵

These Advisory Opinions do not provide definitive guidance to the question presented here since these excessive contributions have already been refunded but the checks not cashed. In addition,

³ Contributions designated for the general election must, of course, be refunded if the candidate is not a candidate in the general election. 11 C.F.R. § 110.1(b)(3)(i).

⁴ *Repeal of Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates*, 73 FR 250 (30 Dec. 2008), pp.79597-79602.

⁵ *But see* Advisory Opinion 1996-5, n.2 (Kim) (refund must be made to illegal contributor or disgorged to the government required because source is known).

Ms. Thomasenia Duncan
June 16, 2009
Page 3

this situation does not involve the extremely serious violation of giving in the name of another. Rather, this involves a committee winding down its operations and seeking to terminate expeditiously and with minimal additional expenses. The Committee recognizes that it must disgorge the money. Of the types of entities to which the Commission has in the past allowed the transfer of funds, RFP believes those funds can be better used by a charitable organization than the federal treasury.

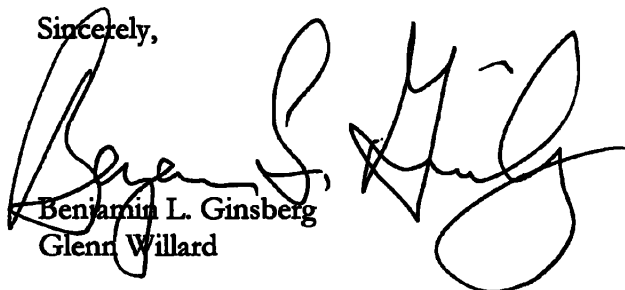
Accordingly, RFP seeks guidance from the Commission with respect to the following questions:

May RFP donate to an organization described in section 170(c) of the Internal Revenue Code an amount equal to stale-dated refund checks issued to, but not negotiated by, contributors who made excessive contributions designated for the 2008 presidential primary election?

If it cannot contribute to charities, does the Commission require that the funds go to the U.S. Treasury? Are there any other entities to which such funds may go?

Thank you for your prompt attention to this request. Please do not hesitate to contact me with any questions.

Sincerely,



Benjamin L. Ginsberg
Glenn Willard